No. 96-292 (4)

Supreme Court, U.S.
FILED
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CLERK

In The

Supreme Court of the United States

October Term, 1995

MARIAN JOHNSON, GORDON HUBBARD, MARGO EDMISTON, H. DEAN SUMMERS, each of them individually, and the IDAHO STATE LIQUOR DISPENSARY,

Petitioners,

vs.

KRISTINE L. FANKELL,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of The State Of Idaho

PETITIONERS' REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IDAHO

or, in the Alternative,
MARIAN JOHNSON, GORDON HUBBARD, MARGO EDMISTON, and H. DEAN SUMMERS,

Petitioners,

PETITIONERS' REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF MANDAMUS TO THE CLERK OF THE SUPREME COURT OF THE STATE OF IDAHO, FREDERICK C. LYON

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ARGUMENT

Petitioners presented the issue for review whether defendants in a state court case brought under 42 U.S.C. § 1983 have a federal right to immediate appellate review of the denial of their motion to dismiss or motion for summary judgment based on a qualified immunity defense. Respondent's Brief in Opposition to a Writ of Certiorari contended that the Court should not grant the petition because Idaho Rule of Civil Procedure 54(b) provides a mechanism for reviewing denial of such motions. Respondent is incorrect.

Idaho's Rule 54(b) is modeled on the federal rule and has the same provisions: " . . . when more than one claim for relief is presented in an action . . . the court may direct entry of a final judgment upon one or more but less than all of the claims. . . . " Under this rule, a trial court cannot certify individual issues that must be decided to reach the ultimate decision on a claim. *Thorn Creek Cattle Assn. v. Bonz*, 122 Idaho 42, 45, 830 P.2d 1180, 1183, *cert. denied*, 506 U.S. 962, 113 S. Ct. 432, 121 L. Ed. 2d 352 (1992). Thus, an Idaho trial court cannot certify the denial of a defense of qualified immunity because denial of that defense does not completely resolve the claim. Therefore, Respondent's interpretation of Idaho's Rule 54(b) is clearly incorrect

and should not be the basis of denial of the Petition for Writ of Certiorari in this case.

Respectfully submitted,

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